SANITARY LEGISLATION.

COURT DECISIONS.

MASSACHUSETTS SUPREME JUDICIAL COURT.

Industrial Diseases—Compensation for, Under Workmen's Compensation Act.

In re BRIGHTMAN. In re AETNA LIFE INSURANCE CO.

107 N. E. Rep., 527. Dec. 31, 1914.

Deceased was employed as a cook on a lighter. He suffered from heart disease, which, aggravated by excitement when the lighter sank and by his exertions in saving his personal effects, caused his death. The court held that his death was caused by an injury within the meaning of the Massachusetts workmen's compensation act.

RUGG, C. J.: * * *

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The deceased employee was a cook upon a lighter, where his employment required him to live and be a large part of the time. The craft began to sink and he then made several trips to and from the deck in an attempt to save some of his clothes and a surveying instrument. With these he hastened to the dock, where he died soon after. He had suffered from valvular disease of the heart, and his exertions in the effort to save his belongings and the excitement incident to the loss of the vessel so aggravated the heart weakness as to cause his death. The perils of the sea were risks arising out of and in the course of the employment of the deceased. The sinking of the boat obviously was one of these perils. It is impossible to say as matter of law that it is not one of the instincts of our common humanity to try to save from a sinking vessel all of one's possessions that reasonably can be secured. The deceased perhaps exerted himself too much for this purpose, although it would be difficult on the evidence to determine to how great an extent the fatal result was due to that cause rather than to the excitement of the occasion. Under these circumstances the calm and wisdom of quiet and safety can not be expected. Much must be excused to the surrounding commotion. The deceased did not abandon the service of his employer and embark on a venture of his own when he tried to save his clothing. It was an implied term of such service as this that the employee might use reasonable effort to this end in an exigency like that which arose. This is not an instance where the discipline of a ship was violated or a higher duty neglected. It was in the course of his employment to live upon the lighter. Whatever it was reasonable for anyone to do leaving a sinking vessel, which was his temporary home, was within the scope of his employment. The standard to be applied is not that which now, in the light of all that has happened, is seen to have been directly within the line of labor helpful to the master, but that which the ordinary man required to act in such an emergency might do while actuated with a purpose to do his duty.

The cases relied upon by the insurer, collected in 25 H. L. R. 420, 421, are distinguishable. They all are instances of conduct by the employee quite outside the scope of the employment, resting upon intelligent abandonment for the moment of

duty to the employer. In the case at bar there may be found to be apparent to the rational mind a causal connection between the employment and the thing done by the employee at the time of the sinking of the lighter. McNichol's Case, 215 Mass. 497, 102 N. E., 697.

Acceleration of previously existing heart disease to a mortal end sooner than otherwise it would have come is an injury within the meaning of the Workmen's Compensation Act. Wiemert *v.* Boston Elev. Ry., 216 Mass., 598, 104 N. E., 360; Clover Clayton & Co. (Ltd.) *v.* Hughes [1910], A. C. 242. The inference that the death of the employee arose out of and in the course of his employment was warranted by the evidence.